cation of this rule will not be defeated by the fact that the estate could not be got in within the year, or that the court had ordered the payment to be delayed beyond that time. *Martin* v. *Martin*, 6 Watts (Pa.) 67; *Bonham* v. *Bonham*, 38 N. J. Eq. 419. It will apply although the estate consists largely of reversionary interests. *In re Blachford*, 27 Ch. D. 676. An intent on the part of the testator that it should not apply has been inferred where the payment of interest on preferred legacies from that date would prevent the payment of other legacies. *Wheeler* v. *Ruthven*, 74 N. Y. 428. But this case must be limited to its special facts. *Matter of Rutherfurd*, 196 N. Y. 311, 89 N. E. 820. Very clear evidence of a contrary intent is necessary to prevent the operation of the general rule. See 2 ILL. L. REV. 440. It has been held, however, against the principal case, that where a legacy is payable out of a reversion it carries interest only from the time that the reversion falls in. *Earle* v. *Bellingham*, 24 Beav. 448; *Gibbon* v. *Chaytor*, [1907] 1 I. R. 65. See 2 JARMAN, WILLS, 6 ed., 1108.

LIBEL AND SLANDER — PRIVILEGED COMMUNICATIONS — ACTION AGAINST WITNESS AND PARTY INDUCING HIM TO TESTIFY FALSELY. — A wife sued her husband for a divorce and upon a claim for money. The husband procured a witness to testify falsely that the wife had committed adultery with her attorney, whereby the divorce suit and money claim were lost. The attorney, who had been assigned a part interest in the money claim, sued the witness and the husband in an action of tort. *Held*, that he has a cause of action against neither. *Schaub* v. *O'Ferrall*, 81 Atl. 789 (Md.).

The witness is protected from actions of slander by his absolute immunity while testifying. *Seaman* v. *Netherclift*, 2 C. P. D. 53; *Hunckel* v. *Voneiff*, 69 Md. 179, 14 Atl. 500. The same policy promoting free testimony bars all actions against him for perjury. *Damport* v. *Sympson*, Cro. Eliz. 520; *Dunlap* v. *Glidden*, 31 Me. 435. But his co-defendant has intentionally harmed the plaintiff without excuse and has not the protection of the witness stand. One inducing another to do harm is not relieved by the fact that the other has a defense. *Hoosac Tunnel Dock & Elevator Co.* v. *O'Brien*, 137 Mass. 424; *Emery* v. *Hapgood*, 7 Gray (Mass.) 55. See *The Bernina*, 12 P. D. 58, 83. Where the witness slanders a stranger to the suit, the instigator is liable. *Rice* v. *Coolidge*, 121 Mass. 393. But to limit litigation, a party to the suit cannot sue for subornation of perjury where the false testimony was made in connection with an issue raised therein. *Smith* v. *Lewis*, 3 Johns. (N. Y.) 157; *Taylor* v. *Bidwell*, 65 Cal. 489, 4 Pac. 491. An attorney is neither party nor privy. But the attorney here was partial assignee. Where statutes allow the real party in interest to sue, he may join with the assignor. *Fireman's Fund Ins. Co.* v. *Oregon R. & Navigation Co.*, 45 Or. 53, 76 Pac. 1075; *Earnest* v. *Barrett*, 6 Ind. App. 371, 33 N. E. 635. But *cf. Otis* v. *Adams*, 56 N. J. L. 38, 27 Atl. 1092. Without such statute, he is in substance a co-owner of the claim and should be concluded by the judgment against the assignor. His proper remedy is a bill in equity to set it aside. See 1 BLACK, JUDGMENTS, 2 ed., § 317. But see 6 POMEROY, EQUITY JURISPRUDENCE, § 656.

MANDAMUS — PROCEEDINGS — PREMATURE COMMENCEMENT. — The defendant railroads were ordered by a commission to make track connections within ninety days. They manifested a determination to disobey the order. Three days later application was made for a writ of *mandamus*. *Held*, that the action is not premature. *State ex rel. Dawson* v. *Chicago, B. & Q. R. Co.*, 118 Pac. 872 (Kan.).

The general rule is that *mandamus* will issue only upon actual default in a duty owed by the defendant at the time of the application for the writ. *State ex rel. Board of Education* v. *Hunter*, 111 Wis. 582, 87 N. W. 485. It is said

that courts will not anticipate the omission of a legal duty. *State ex rel. Piper* v. *Gracey*, 11 Nev. 223. Many of these cases could be supported either on the ground that, like the remedy of specific performance, *mandamus* is granted only in the sound discretion of the court, or on the ground that no legal duty rested on the defendant. *United States ex rel. Langley* v. *Bowen*, 6 D. C. 196; *Northwestern Warehouse Co.* v. *Oregon Ry. & Navigation Co.*, 32 Wash. 218, 73 Pac. 388. The prevailing view seems inconsistent with the very nature of *mandamus*, which is to prevent a failure of justice. *Attorney General* v. *City of Boston*, 123 Mass. 460. As the court points out, often the benefits of the act will be lessened or lost, and irremediable damage done, unless it is performed within the stated time. *State ex rel. Howells* v. *Metcalf*, 18 S. D. 393, 100 N. W. 923. An opposite result would secure to the public punctual performance, and if the writ were not made peremptory, the defendant could not be unduly prejudiced by being forced to show justification for a refusal to perform. See *Chicago, etc. R. Co.* v. *Commissioners of Chase County*, 49 Kan. 399, 414, 30 Pac. 456, 459. The decision, although overruling previous Kansas cases, and contrary to the great weight of authority, shows a commendable tendency towards preventive justice.

MECHANICS' LIENS — EFFECT OF REPLACING DEFECTIVE MATERIALS ON TIME FOR FILING STATEMENT. — A statute made the lien of a subcontractor for materials furnished conditional on the filing of a statement within sixty days after furnishing the materials. A subcontractor replaced certain defective materials at the instance of the owner of the building and filed a statement within sixty days afterwards. The other materials furnished by the subcontractor were all delivered more than sixty days before the filing of the statement. *Held*, that the subcontractor has no lien for the materials furnished. *Cady Lumber Co.* v. *Reed*, 133 N. W. 424 (Neb.).

Under such statutes the period for filing the statement begins to run after the last item has been furnished under the contract. *Patton* v. *Matter*, 21 Ind. App. 277, 52 N. E. 173; *Hensel* v. *Johnson*, 94 Md. 729, 51 Atl. 575. The authorities on the question decided in the principal case are in conflict. The cases supporting the principal case are based on the ground that the materials are not furnished under the contract, but are given as a reparation for an injury inflicted. *Harrison* v. *Homœopathic Association*, 134 Pa. St. 558, 19 Atl. 804; *Voightman* v. *Southern Ry. Co.*, 123 Tenn. 452, 131 S. W. 982. The cases opposed argue that the materials are furnished under the contract, that in furnishing them the subcontractor fulfils a hitherto imperfectly performed obligation. *St. Louis National Stock Yards* v. *O'Reilly*, 85 Ill. 546; *Conlee* v. *Clark*, 14 Ind. App. 205, 42 N. E. 762. The analysis of the latter cases would seem correct. It might be urged in objection to this view that it would subject the owner to the danger of a double payment where he had paid the original contractor sixty days after the delivery but before the discovery of the defects. But in such a case, it is submitted, the subcontractor would be estopped for this purpose to set up that the subsequently furnished materials were furnished under the contract.

MECHANICS' LIENS — MATERIALS FURNISHED BUT NOT USED. — The plaintiffs supplied iron and steel work for the construction of the defendants' building. Owing to a change in the plans over which the plaintiffs had no control, a part of the materials furnished by them was never used. A statute provided that "whoever . . . furnishes labor or materials in erecting . . . a house, building, or appurtenances . . . has a lien thereon." *Held*, that the plaintiffs are not entitled to a lien for the unused materials. *Fletcher-Crowell Co.* v. *Chevalier*, 81 Atl. 578 (Me.).

Jurisdictions are squarely in conflict on whether materials furnished but